Supreme Court, U. S.
FILED
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EDWARD BATES, JR., CLERK

71-1150

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Application of

PATENTS MANAGEMENT CORPORATION;
INNOVATORS MANAGEMENT AND CAPITAL CORPORATION,
ISRAEL PATENTS CORPORATION and
HEART DISEASE RESEARCH FOUNDATION,
as constituting the PENN CENTRAL
BONDHOLDERS PROTECTIVE COMMITTEE,

Petitioners

-against-

TRUSTEES OF THE PENN CENTRAL
TRANSPORTATION COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Application of

PATENTS MANAGEMENT CORPORATION,
INNOVATORS MANAGEMENT AND CAPITAL CORPORATION,
ISRAEL PATENTS CORPORATION and
HEART DISEASE RESEARCH FOUNDATION,
constituting the PENN CENTRAL
BONDHOLDERS PROTECTIVE COMMITTEE,

Petitioners

-against-

TRUSTEES OF THE PENN CENTRAL
TRANSPORTATION COMPANY,

Respondents.

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

This is a Petition for a Writ of Certiorari from a determination of the United States Court of Appeals for the Third Circuit which affirmed a determination of the United States District Court for the Eastern District of Pennsylvania which denied, as a matter of discretion, Petitioners' Application to Intervene generally in a bankruptcy proceeding.

OPINION OF THE COURT BELOW

See Appendix

THE QUESTION PRESENTED IN THIS PETITION

This Petition brings up a question of most compelling and important public interest which is, in brief, whether it is Constitutional to deprive a creditor of his right to be heard in a corporation reorganization merely because his interest (although substantial by ordinary standards) represents only a small fraction of the outstanding debt of the debtor.

JURISDICTION OF THIS COURT AND TIMELINESS OF THE PETITION

This Court acquires jurisdiction of this Petition pursuant to 28 USC 1254(1). The Petition is brought against a determination of the United States Court of Appeals for the Third Circuit issued January 26, 1972. This Petition is filed within three months from the date of the determination of the Court of Appeals.

F A C T S :

Petitioners, three corporations and a tax exempt charitable Foundation, are the owners of Forty-Three Thousand

($43,000.00) Dollars of bonds of the debtor, PENN-CENTRAL TRANSPORTATION COMPANY. The amount of bonds, while substantial, concededly represents only a small fraction of the total outstanding debt of the debtor. Two of the series of bonds held by the Petitioners, namely, the NEW YORK NEW HAVEN AND HARTFORD RAILROAD COMPANY GENERAL MORTGAGE INCOME BONDS Conc. 41/2% Series A, of which Petitioners hold Five Thousand ($5,000.00) Dollars and THE NEW YORK CENTRAL RAILROAD COMPANY Collateral Trust Bonds due April 1, 1980 of which the Petitioners hold One Thousand ($1,000.00) Dollars are not represented by any parties at all in these proceedings. The Court did grant General Intervention to the Indenture Trustees of the other series of bonds held by the Petitioners. The Indenture Trustees of the other series of bonds have serious conflicts of interest as set forth in the moving papers. These include Securities Act litigation against the MORGAN GUARANTY TRUST COMPANY based upon preferential sales of Penn Central securities based upon "tipee" information, the holding by the Indenture Trustees of large unsecured claims of Penn Central and the holding by the Indenture Trustees of large deposits from parties holding unsecured claims of Penn Central.

The applicable provisions of the Bankruptcy Act 11 USC 205(c)[13] require Court Permission for General Intervention in a Railroad Reorganization Proceeding.

Petitioners moved for such permission and, based upon the Court's discretionary powers, the Petitioners' Application was denied. Petitioners (other than ISRAEL PATENTS CORPORATION) filed proofs of claim for the bonds held (amounting to Forty-Two Thousand Dollars) and the original Petitioners and ISRAEL PATENTS CORPORATION again petitioned the Court for permission to generally Intervene as Creditors. The renewed Petition was again denied by the Court based upon the discretionary powers given by 11 USC 205(c)[13].

In the proceedings before the District Court, in addition to urging the grant of the Petitioner's Applications to Intervene based upon the facts set forth above, the Petitioners further made a direct attack on the Constitutionality of 11 USC 205(c) [13] on the ground that this section was invalid as repugnant to the "due process" clause of the Fifth Amendment to the Constitution of the United States. Petitioners further claimed that, even if the Section was valid, a denial of Petitioners' Applications, under the facts of this case, would constitute an Unconstitutional Application of 11 USC 205(c) [13]. Both claims were overruled by the District Court, without commenting on the Constitutional claims.

Appeal was then taken to the Court of Appeals for the Third Circuit, at which time the Constitutional claims

were again raised. The Court of Appeals, by Per Curiam Opinion which did not even comment on the Constitutional claims raised by the Petitioners, affirmed the District Court's determinations. This Petition followed.

POINT ONE

11 USC 205(c) [13] INSOFAR AS IT PROVIDES FOR DISCRETIONARY INTERVENTION IS UNCONSTITUTIONAL AS REPUGNANT TO THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Bankruptcy power (and with tt the power to reorganize corporations) is vested in the Federal Courts by the Constitution. The Bankruptcy power of the Courts, however, is subject to Constitutional limitations. (Louisville Land Bank vs. Radford 295 US 555; Ginsberg vs. Lindel, 107 Fed (2d) 721 and Thompson vs. Scratt, 95 Fed. (2nd) 214.).

In Bankruptcy the Courts of Bankruptcy have broad and wide powers. They can suspend the remedies of creditors having secured claims, they can permit the Trustees of a corporation in reorganization to issue Trustees Certificates which become preferred claims against the debtors assets even as against prior secured debts, and they can approve a

plan of reorganization which has wide interference with the normal preferences of claims. Obviously, any Court having such a large degree of control of claims against a debtor must hear objections or suggestions with respect to any action that the Court desires to take. Failure to give a creditor notice of action to be taken and the right to be heard constitutes a denial of "due process". Therefore, since 11 USC 205(c) [13] merely provides for discretionary intervention at the pleasure of the District Judge, this section of the Bankruptcy Act is Unconstitutional.

It is to be noted that a declaration of Unconstitutionality of the discretionary intervention provisions of the Bankruptcy Act will have limited impact on normal bankruptcy proceedings because the Act has a "separability clause" which saves the entire act with the exception of the questioned section.

In normal bankruptcy proceedings, all creditors are entitled, as of right, to be heard and to be given notice of all applications made in the proceedings. See the "Notice" provisions of 11 USC 94. However, rather usrprisingly, the "corporate reorganization" sections of the Act 11 USC 205(c) [13] involved in this

proceeding and the general corporate reorganization provisions in 11 USC 607 merely provide for "discretionary" intervention. The specific provisions of 11 USC 205(c) [13] read, as follows:

> "** The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene, * * *"

It is submitted that the underlined portion of 11 USC 205 (c) [13] is in violation of the "due process" portion of the Fifth Amendment to the Constitution of the United States which reads, as follows:

> " * * * no person * * *shall * * * be deprived of life, liberty or property, without due process of law * * *"

The essence of "due process" is "fair play" Galvan vs. Press 347 US 522,

the right to present a claim or defense, Ackerman vs. US 178 Fed (2nd) 983, and Notice of any Hearings to be held, Haseltine vs. Zenith Radio Corp., 395 US 100, L. B. Wilson, Inc. vs. FCC, 170 Fed (2nd) 793, and Eisen vs. Carlisle, 391 Fed (2nd) 555. If intervention is granted only as a discretionary matter by a District Judge in Bankruptcy Proceedings then, it is submitted, that the provisions of the Act are repugnant to the Constitution.

Since the enactment of the above-quoted section there has not been a direct Constitutional attack on the provisions thereof. It is submitted that, as public ownership of corporations becomes more and more widespread, and larger and larger corporation bankruptcies occur, it becomes imperative to protect the Constitutional rights of stockholders and bondholders and insure that their rights are protected.

POINT TWO

IF PETITIONERS ARE NOT PERMITTED TO INTERVENE IN THIS CASE BECAUSE OF THE ALLEGEDLY SMALL PROPORTION OF THE PETITIONERS' HOLDINGS TO THE REMAINDER OF BONDS OUTSTANDING THEN THE DETERMINATION OF THE COURT IS IN VIOLATION OF THE FOURTEENTH AMENDMENT

TO THE CONSTITUTION OF THE UNITED STATES AS CONSTITUTING A DEPRIVATION OF EQUAL PROTECTION OF THE LAWS.

The Court of Appeals, in affirming the determination of the District Court denying general intervention to the Petitioners, held that Petitioners' interests, while substantial in themselves, represented only a very small proportion of the total amount of debt outstanding. Thus, if the rationale of the Court of Appeals is allowed to stand, the right of a creditor to participate in a reorganization proceeding will depend upon the size of the corporate debt involved and not the size of the creditors holdings. This, of course, is in direct violation of the "equal protection of the laws" provisions of the Fourteenth Amendment to the Constitution of the United States.

The Courts have held that the "equal protection of the laws" provisions of the Fourteenth Amendment are also applicable to Federal Proceedings, since they are inherent in "due process" requirements. See Harrell vs. Tobriner, 394 US 618, Washington vs. US, 401 Fed. (2nd) 654 and Conner vs. Finch, 314 Fed. Supp. 364.

Obviously, if the holder of a large proportion of the debt of a debtor is entitled to intervene generally but the holder of a small proportion of the debt of a debtor is not, then the party not permitted to intervene generally is not given "equal protection of the laws" and the statute has been Unconstitutionally applied.

POINT THREE

THE DENIAL OF GENERAL INTERVENTION BY THE COURT TO THE PETITIONERS HEREIN CONSTITUTES AN UNCONSTITUTIONAL APPLICATION OF THE STATUTE INVOLVED

The specific facts of this case indicate an Unconstitutional application of the statute involved even if the discretionary intervention provisions were otherwise Constitutional. It is noted that 11 USC 205(c) [13] gives any creditor the right to be heard. This, of course, mandates notice of all proceedings. However, the Courts have consistently held that a party not permitted to generally intervene is not entitled to notice of proceedings. This, of course, constitutes an Unconstitutional application

of the statute involved. Notice of all proceedings is mandated by Constitutional requirements.

POINT FOUR

DENIAL OF GENERAL INTERVENTION TO THE PETITIONERS IN THIS CASE, EVEN IF INTERVENTION WERE DISCRETIONARY IS AN IMPROVIDENT EXERCISE OF DISCRETION

Assuming arguendo, that intervention in the present case were merely discretionary, then under the specific facts of this case the denial of intervention to the petitioners herein was an improvident exercise of discretion on the part of the Court. This occurs because two series of bonds owned by the Petitioners are unrepresented by any one whatsoever. The Indenture Trustees on these series of bonds, for reasons of their own, have not appeared in this action. Therefore, since these series of bonds are unrepresented by anyone, the Petitioners should, at least, have the right to assert creditors' rights concerning these bonds. Therefore, the denial of intervention under the circumstances of this case was improper.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI HEREIN SHOULD BE, IN ALL RESPECTS, GRANTED.

Respectfully submitted,

MAXIMILIAN BADER
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APPENDIX

TO

PETITION

FOR WRIT OF CERTIORARI

Motion to Intervene, Dated August 20, 1970

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN BANKRUPTCY NO. 70-347

In the Matter of

PENN CENTRAL TRANSPORTATION COMPANY.

MOTION TO INTERVENE

I. Walton Bader, attorney for Patents Management Corporation, Innovators Management and Capital Corporation, Heart Disease Research Foundation, as constituting Penn Central Bondholders Protective Committee, hereby moves this Court, at a date to be set by the Court, to formerly intervene in the above-proceeding, in behalf of the parties named herein.

The grounds upon which this motion is based are set forth in the accompanying affidavit of I. Walton Bader, annexed to this motion.

Dated: August 20, 1970

Yours, etc.

I. WALTON BADER,
Attorney for Penn Central
Bondholders Protective Committee
Office and P. O. Address
274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860.

WESSEL AND CARPEL,
Associate Attorneys for Penn
Central Bondholders Protective Committee

By: HENRY WESSEL, ESQ.
800 Bankers Securities Building
Walnut and Juniper Streets
Philadelphia, Pa. 19107.

Affidavit of George Abramson in Support of Motion to Intervene

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

State of Georgia
County of Fulton—ss.:

GEORGE ABRAMSON, being duly sworn, deposes and says:

I am the President of Patents Management Corporation, a Georgia corporation, of Georgia Savings Bank Building, Atlanta, Georgia. I am also the Chairman of the Penn Central Bondholders Protective Committee.

I make this affidavit in support of the petition made by the Committee herein to intervene in the above-entitled proceeding as a party.

Affidavit of George Abramson

At the outset, I have been informed by my attorney that since the amount of Penn Central Bonds of various types owned by the Members of the Committee constitutes many thousands of dollars (the amount of bonds owned by my Corporation alone is Eighteen Thousand ($18,000.) Dollars) that the Committee is entitled to intervene in this proceeding as a matter of right and is entitled to have notice of all proceedings had herein. However, in view of the statement by the Court that a formal motion is required, I am submitting this affidavit in support of the application.

My company is involved in the promotion and development of inventions and technology. My company owns a number of patents in various fields. Accordingly, it is possible that the participation of my company might be helpful in this proceeding in that possible suggestions of technological improvements in Penn Central operations might be made which might cause a reorganization of the company with minimum loss to the bondholders herein.

In addition, the parties in this proceeding who have the most to lose are the bondholders. It is their debts that will be "scaled down" when the reorganization plan is completed. Participation of a representative bondholders group, in this connection, is vital.

It is also my intention to apply to the Interstate Commerce Commission for permission to solicit various other bondholders of the Penn Central Transportation Company to join the Committee so that the representation by the Committee of such bondholders will be substantially increased.

It is believed that the requisite permission will be granted by the Interstate Commerce Commission so that

a substantial representation of Penn Central Bondholders on the Committee will be had.

However, in any event, both I, my Company, and the other Members of the Committee do not wish to be represented by any one else in this proceeding but by Mr. I. Walton Bader. Mr. I. Walton Bader has represented the interest of my Company, the interest of Innovators Management and Capital Corporation, and the interests of the Heart Disease Research Foundation, for many years. We have confidence in Mr. Bader and believe that he is competent to represent our interest. We do not have confidence in any other representation. We believe that we are entitled to have our own representation in connection with the bankruptcy proceeding involved herein.

WHEREFORE, the undersigned prays that this motion be in all respects granted.

GEORGE ABRAMSON

(Sworn to by George Abramson, August, 1970)

Affidavit of I. Walton Bader in Support of Motion to Intervene

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

State of New York
County of New York—ss.:

I. WALTON BADER, being duly sworn, deposes and says:

I am the attorney for Patents Management Corporation, Innovators Management and Capital Corporation, and Heart Disease Research Foundation, constituting the Penn Central Bondholders Protective Committee. I am a member of the Bar of the Supreme Court of the United States, the Court of Appeals of the State of New York, the District of Columbia, and the United States Court of Appeals for the Second Circuit. I was admitted to this case *Pro Hac Vice* by order of this Court and I am, therefore, entitled to participate in this proceeding. In accordance with the local rules of this Court, Philadelphia associate counsel, Wessel and Carpel, have also filed their appearance and communications can be had with Philadelphia associate counsel.

The Members of the Committee, whom the undersigned represents, are the owners of a substantial number of bonds of the bankrupt herein. The amount of these bonds total many thousands of dollars. Therefore, obviously,

the Members of the Committee have a substantial and important interest in this proceeding.

Formal proofs of claim are being prepared with respect to the bonds owned by the present members of the Committee.

It is obvious that the present Members of the Committee have a most substantial interest in the outcome of this proceeding. In addition, it is pointed out that one of the Members of the Committee is the Heart Disease Research Foundation, which Foundation is a charitable organization exempt from taxation under the Internal Revenue Laws of the United States. It is submitted that the participation of the Heart Disease Research Foundation in this proceeding will constitute representation of the "public interest" herein. It is true that the Interstate Commerce Commission is a party to this proceeding and presumably, will also represent the public interest. However, it is submitted, that the participation of a non-governmental body representing the public interest, will be most helpful herein.

For all of the above reasons, it is respectfully submitted that the participation of the Penn Central Bondholders Protective Committee in this proceeding, as a party, would be most appropriate.

WHEREFORE, the undersigned prays that this motion be in all respects granted.

I. WALTON BADER

(Sworn to by I. Walton Bader, August, 1970)

Renewed Petition for Intervention. Dated November 18, 1970

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

[SAME TITLE]

Renewed Petition for Intervention on Behalf of Patents Management Corporation, Innovators Management & Capital Corp., and Heart Disease Research Foundation, as Constituting the Penn-Central Bondholders Protective Committee

The Petitioners designated hereinabove, by their attorney, I. Walton Bader, and associate attorney, Henry Wessel hereby petitions this Court pursuant to Section 77 (c) (13) of the Bankruptcy Act, 11 USC 205 (c) (13), for General Intervention as Creditors of the Debtor in these proceedings.

As grounds in support of this Petition, Petitioners allege all of the grounds set forth in the prior Notice of Motion and Affidavits which were submitted on August 20, 1970, as well as the following additional grounds:

1. Petitioner, Patents Management Corporation, is a Corporation duly organized and existing under the Laws of the State of Georgia, having its office and place of business at Georgia Savings Bank Building, Atlanta, Georgia.

2. Petitioner Innovators Management & Capital Corp., is a Corporation duly organized and existing under the Laws of the State of New York, having its office and place of business at 274 Madison Avenue, New York, N. Y.

3. Petitioner, Heart Disease Research Foundation, is a Charitable Trust, duly organized and existing under the Laws of the State of New York, having its office and place of business at 963 Essex Street, Brooklyn, New York.

4. All of the said Petitioners are Bondholders of the Bankrupt hereinabove and their total holdings are substantial, amounting to Forty Two Thousand ($42,000.00) Dollars.

5. All of said Petitioners have been clients of the said, I. Walton Bader, principal attorney for the Petitioners herein, prior to the date of Bankruptcy of the Debtor herein and said Petitioners have requested the aforesaid, I. Walton Bader, to represent them in this proceeding. There has been no solicitation of the said Petitioners by anyone in connection therewith.

6. The specific holdings of the Petitioners, are in the Bonds of the Debtor and are detailed as follows:

Bond Type	*Amount*	*Serial Number*	*Holder*
New York New Haven and Hartford Railroad Company General Mortgage Income Bond Conv. 4½% Series A	$1,000.	1M 429542	Innovators Management and Capital Corp.
"	$1,000.	1M 429543	"
"	$1,000.	1M 429544	"
"	$1,000.	1M 429545	"
"	$1,000.	1M 429546	"
The Pennsylvania Railroad Company General Mortgage 4½% Bond Series E due July 1, 1984	$1,000.	G 709	"
Penn Central Company Collateral Trust 6½% Bond due April 15, 1993	$1,000.	01139	Heart Disease Research Foundation
The New York Central Railroad Company Collateral Trust 6% Bond due April 1, 1980	$1,000.	M 27815	"
The New York Central Railroad Company Collateral Trust 6% Bond due April 15, 1990	$1,000.	M 9800	Patents Management Corporation
"	$1,000.	M 7439	"
"	$1,000.	M 8063	"
"	$1,000.	M 6351	"
"	$1,000.	M 7440	"
Pennsylvania RR Company General Mortgage 4½% Series E due July 1, 1984	$1,000.	31496	Innovators Management & Capital Corp.
"	$1,000.	31495	"
"	$1,000.	23862	"

Bond Type	*Amount*	*Serial Number*	*Holder*
Pennsylvania RR Company General Mortgage 4½% Gold Bond Series D due April 1, 1981	$1,000.	23454	"
"	$1,000.	31000	"
"	$1,000.	31609	"
"	$1,000.	2190	"
"	$1,000.	46000	"
The New York Central Railroad Company Consoidation Mortgage Gold Bond 4% Series A	$1,000.	45736	"
"	$1,000.	50111	"
"	$1,000.	31330	"
"	$1,000.	20191	"
"	$1,000.	23541	"
The New York New Haven and Hartford Railroad Company First and Refunding Mortgage Bond 4% Series A due July 1, 2007	$1,000	M 48603	"
"	$1,000	M 981	"
"	$1,000	M 45745	"
"	$1,000	M 4422	"
"	$1,000	M 13207	"
The New York Central Railroad Company Refunding and Improvement Mortgage Bond 5% due October 1, 2013	$1,000.	M 30928	Patents Management Corporation
"	$1,000.	M 4102	"
"	$1,000.	M 48648	"
"	$1,000.	M 26307	"
"	$1,000.	M 27990	"

Bond Type	*Amount*	*Serial Number*	*Holder*
The New York Central Railroad Company 4% Consolidation Mortgage Gold Bond due Feb. 1, 1998, Series A	$1,000	36424	"
"	$1,000	36423	"
"	$1,000	60271	"
"	$1,000	36425	"
"	$1,000	16962	"
The Pennsylvania Railroad Company General Mortgage 3½% Bond, Series F, due January 1, 1985	$1,000	4571	"

7. Petitioners are Creditors of the Debtor and are entitled to be heard, as of right, pursuant to 11 USC 205(c)(13). In addition, Petitioners do not wish to be represented by the various Indenture Trustees (Banks) upon the ground that said Indenture Trustees are not competent to represent the interest of Petitioners, that said Indenture Trustees (Banks) may have conflicting interests to those of Petitioners.

8. On information and belief, the following constitutes the possible conflicting interests that said Indenture Trustees (Banks) have in these proceedings:

a. In addition to being Indenture Trustees, said Indenture Trustees (Banks) also have, or represent, a large amount of unsecured claims against the Debtor. Since the Bonds owned by the Petitioners represent secured claims, the said Indenture Trustees (Banks) will be faced with a decision as to whether their primary interests lie

with the secured Creditors or with the unsecured Creditors.

b. On information and belief, the aforesaid Indenture Trustees (Banks) have large sums of money on deposit from depositors who also hold large unsecured claims against the Debtor. The recommendation made by said Indenture Trustees (Banks) in connection with a plan for reorganization might be affected thereby.

c. On information and belief, the said Indenture Trustees (Banks) have large loans outstanding to firms which also have large unsecured claims against the debtor. Such fact might affect the judgment of said Indenture Trustees (Banks) in proposing a plan of reorganization.

9. There are presently proceedings pending which affect the interests of the Petitioners, and in these proceedings it is Petitioners' intention to take a position. In particular, the Petitioners are concerned about the Application for Payment of Bond Interest which is pending before this Court on November 30, 1970, and Petitioners intend to take a position thereupon, as soon as this Petition for Intervention is granted.

10. Since the Court, under its Bankruptcy Power, has the right to affect the property of the Petitioners by entering a Plan of Reorganization, deferring payment of obligations, modifying preferences of Creditors, scaling down debts permitting the Trustees to issue Trustee Certificates which constitute Superior Liens on the property of the Debtor and affect the security of Petitioners' claims; failure to permit to intervene generally in this proceeding, would constitute deprivation of Petitioners' property without due proces of Law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

Renewed Petition for Intervention

11. All of the proceedings in this case will affect the interests of the Petitioners. This includes, for example, the Trustees' decisions relating to the operation of the Debtor Railroad, Administrative decisions, suggestions of reorganization plans, etc.

12. Prior to the filing of the Petition for Reorganization by the Debtor herein, some 15 Executives of the Debtor, unloaded more than forty thousand shares of Penn-Central stock for some two million dollars at prices between $40.00 a share and $70.00 a share. This stock is now selling at approximately $7.00 a share. There have also been statements by Governmental agencies that certain fraud possibilities may exist in connection with the Debtor's present difficulties. It is submitted that the Petitioners herein should have the right to explore these questions in order to protect their interests.

13. In addition to the above, on information and belief, the Petitioners believe that the parent Company, Penn-Central Company, may be responsible for the debts of the Debtor and that Petitioners may have the right to reach Penn-Central Company assets. Intervention in these proceedings is necessary on the part of Petitioners in order to obtain this relief.

14. One of the Petitioners, Heart Disease Research Foundation, is a Charitable organization. Intervention by this organization would provide an additional representative of the public in connection with all proceedings to be taken herein.

15. This Court has, previously, treated Petitioners as if they had been granted Leave to Intervene.

Renewed Petition for Intervention

WHEREFORE, Petitioners pray that this Petition for Intervention be, in all respects, granted.

Dated: November 18, 1970

Respectfully submitted,

PATENTS MANAGEMENT CORPORATION,
INNOVATORS MANAGEMENT & CAPITAL CORP.

and

HEART DISEASE RESEARCH FOUNDATION, as constituting the PENN-CENTRAL BONDHOLDERS PROTECTIVE COMMITTEE

By: MURRAY DONITZ,
Secretary.

(Verified by Murray Donitz, November 18, 1970)

Order No. 139, Denying Petition for Intervention

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

Order No. 139

AND NOW, this 25th day of January, 1971, it is ORDERED that the petition of the Penn Central Bondholders Protective Committee (document 302) for leave to intervene is DENIED.

JOHN P. FULLAM
J.

Second Renewed Petition for Intervention

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

[SAME TITLE]

Renewed Petition for Intervention on Behalf of Patents Management Corporation, Innovators Management & Capital Corp., and Heart Disease Research Foundation, as Constituting the Penn Central Bondholders Protective Committee

The Petitioners designated hereinabove, by their attorney, I. Walton Bader, and associate attorney, Henry Wessel, hereby, through their Petition to this Court, pursuant to Section 77(c)[13] of the Bankruptcy Act 11 USC 205(c)[13] for general intervention as Creditors of the Debtor in these proceedings.

A prior Petition made by these parties was denied by this Court in its Order No. 139 on January 25, 1971.

Since the denial of the prior Application, the Petitioners herein have filed Proofs of Claim, and, it is submitted, that by reason thereof, these Petitioners are Creditors of the Debtor and are entitled to intervene and be heard as a matter of right.

In support of the Renewed Petition herein, your Petitioners allege the following:

Second Renewed Petition for Intervention

1. Incorporated, by reference in this Petition, are all of the allegations made in the prior Petition, dated November 18, 1970, as well as the following additional allegations:

A. On May 27, 1971, the Petitioner, Heart Disease Research Foundation, filed Proof of Claim with respect to principal and interest, on New York Central Railroad Company Six Per Cent Bond, No. M-27815, due April 1, 1980.

B. On May 27, 1971, your Petitioner, Innovators Management & Capital Corp., filed its Proof of Claim with respect to New York, New Haven and Hartford Railroad Company, General Mortgage Bonds, Nos. IM-429542, IM-429543, IM-429544, IM-429545 and IM-429546.

C. On May 27, 1971, your Petitioner, Patents Management Corporation, filed Proof Claim with respect to the following Bonds:

1. New York Central Railroad Company Bonds: Nos. 58054, 40774, 58331, 59296 and 40775.

2. Pennsylvania Railroad Company Bonds. Nos. 2190, 31609, 31006, 25354, and 46000.

3. Pennsylvania Railroad Company Bond. No. 4571.

4. New York Central Railroad Company Bonds. Nos. 6331, 7439, 7440, 9800 and 8063.

5. New York Central Railroad Company Bonds, Nos. 30111, 31330, 20191, 23541, 16962, 36425, 60271, 36423, 36424 and 45736.

6. New York Central Railroad Company Bonds, Nos. M-26307, M-27990, M-4102, M-48648 and M-80928.

7. Pennsylvania Railroad Company Bonds, Nos. 16871, 11430, 23862, 31495 and 31496.

8. New York, New Haven & Hartford Railroad Company Bonds, Nos. M-45745, M-48603, M-981, M-13207 and M-4422.

2. By reason of the filing of the aforesaid Proofs of Claim, your Petitioners are now Creditors in the Bankruptcy Proceedings who are entitled to intervene therein to protect their interests, as a matter of right.

3. By reason of the conflicts of interest already shown in these proceedings with respect to the Indenture Trustees, it is obvious that the representation of your Petitioners by such Indenture Trustees is not adequate and that insistance that your Petitioners be represented by such Indenture Trustees, would constitute a violation of the Fifth Amendment of the Constitution of the United States and a deprivation of Petitioners' property, without due process of law.

4. There are presently pending, in the Bankruptcy Proceedings, questions of great importance to your Petitioners. These questions relate to the sale by the Debtor of substantial real estate and subsidiary corporate interests. Under the present posture of this proceeding, your Petitioners have no standing to offer suggestions with respect to these questions, constituting a further taking of Petitioner's property, without due process of law.

Second Renewed Petition for Intervention

WHEREFORE, YOUR PETITIONERS PRAY that the Renewed Petition, be, in all respects granted.

Dated: June 3, 1971

Respectfully submitted,

PATENTS MANAGEMENT CORPORATION,
INNOVATORS MANAGEMENT & CAPITAL CORP.

and

HEART DISEASE RESEARCH FOUNDATION, as constituting the PENN-CENTRAL BONDHOLDERS PROTECTIVE COMMITTEE

By: s/ MURRAY DONITZ,
Secretary

(Verified by Murray Donitz, June 3, 1971)

Order No. 309 Denying Renewed Petition for Intervention

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

Order No. 309

AND NOW, this 30th day of June, 1971, it appearing that petitioners have insufficient interest in these proceedings to be permitted to intervene generally, it is ORDERED that the renewed petition for intervention on behalf of the Penn-Central Bondholders Protective Committee is DENIED.

JOHN P. FULLAM
J.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 71-1264 and 71-1834

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor

PATENTS MANAGEMENT CORPORATION, INNOVATORS MANAGEMENT AND CAPITAL CORPORATION, and HEART DISEASE RESEARCH FOUNDATION, as constituting the Penn-Central Bondholders Protective Committee,
Appellants in No. 71-1264

ISRAEL PATENTS CORPORATION, INNOVATORS MANAGEMENT AND CAPITAL CORPORATION, PATENTS MANAGEMENT CORPORATION AND HEART DISEASE RESEARCH FOUNDATION AS CONSTITUTING THE PENN CENTRAL BONDHOLDERS COMMITTEE,
Appellants in No. 71-1834

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Submitted December 9, 1971

Before McLAUGHLIN, ALDISERT and ROSEN,
Circuit Judges

OPINION OF THE COURT

(Filed January 26, 1972)

PER CURIAM:

Appellants, calling themselves Penn-Central Bondhold-

ers Protective Committee, appeal from the decision of the Reorganization Court (United States District Court for the Eastern District of Pennsylvania) which on two occasions denied their petition to intervene generally in this bankruptcy matter. In the brief for appellants it is said under "Facts" that appellants are bondholders of the bankrupt "in the amount of approximately Fifty Thousand ($50,000.) Dollars". Later on in the brief for appellants the second petition for intervention alleges that they are bondholders of the bankrupt and that their total holdings amount "to Forty-Two Thousand ($42,000.00) Dollars". It is stated on behalf of the bankrupt's trustees that appellants own $42,000 in bonds of the debtor. That amount is about .000022 or .0022 of 1% or 1/45,238th% of the outstanding long-term indebtedness of the debtor. The Bankruptcy Court, exercising its discretion, has allowed Governmental bodies, labor organizations, mortgage trustees, the Penn Central Company, the Trustees of the New York, New Haven and Hartford Railroad Co. and certain other parties to intervene. The Court denied the petitions of other applicants including appellants. Appellants' petition to intervene generally was denied because in this vast bankruptcy, as appellees state, intervention in the proceedings therein must be held to manageable proportions. The outstanding long-term debt of the bankrupt is $1,906,761,767. Other liabilities and deferred credits total $582,276,848. In this situation it is obviously vital to group the creditor interests so that they be properly taken care of. Having in mind that there are over 150,000 creditors involved in this proceeding, it is quite a task. Judge Fullam and the Trustees are doing everything possible to expedite this reorganization and seeing to it that all bonafide creditors are fairly protected, including the present appellants.

The Court in this discretionary problem wisely insisted that representative intervenors, covering all of the various types of the bankrupt's creditors, be allowed to intervene. This action materially helps the entire proceeding to continue to move forward to as speedy conclu-

sion as possible under the circumstances. See In the Matter of the Central Railroad Company of New Jersey, 429 F.2d 507 (3rd Cir. 1970), cert den. 401 U.S. 938 (March 1, 1971); Blumgart v. St. Louis-San Francisco Railway Co., 94 F.2d 712, 716 (8th Cir. 1938); In re Denver & R. G. Western R. Co., 13 F.Supp. 821, 824 (D.C. Col. 1936); In re Central of Georgia Ry. Co., 55 F.Supp. 310, 313 (S.D. Georgia 1944). None of the cases cited on behalf of appellants sustains its theory of general intervention under the facts before us. It will be remembered that where any creditor considers that it has a particular problem which warrants being specially presented to the Bankruptcy Court, the latter will pass upon the merits of such request.

In the circumstances before us, Judge Fullam acted properly and well within his discretion. For the reasons expressed in this opinion, the orders 139 and 309 denying appellants' petitions to intervene generally in these proceedings are affirmed.

A True Copy

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

Supreme Court, U. S.
FILED
APR 10

IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1150.

PATENTS MANAGEMENT CORPORATION, et al.,
Petitioners,

v.

TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

BLANK, ROME, KLAUS & COMISKY,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1971.

No. 71-1150.

PATENTS MANAGEMENT CORPORATION, ET AL.,
Petitioners,

v.

TRUSTEES OF THE PROPERTY OF THE PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The Opinion and Orders of the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit are adequately cited and set forth in the Petition and in the Appendix thereto.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF THE QUESTION PRESENTED.

Whether the Penn Central Transportation Company Reorganization Court properly exercised its discretion in refusing to permit individual bondholders to intervene generally in the Reorganization Proceedings where (a) the bondholders represented only $42,000 in bonds out of the total outstanding long-term indebtedness of the Debtor of over $1,900,000,000, (b) the individual bondholders' interests are already represented by various mortgage indenture trustees who have been permitted to intervene, and (c) the individual bondholders are participating in proof of claim proceedings.

STATUTE INVOLVED.

The statute governing intervention in railroad reorganization proceedings is Bankruptcy Act Section 77(c)(13), 11 U. S. C. § 205(c)(13). The pertinent portion of the statute is set forth *infra* at p. 7.

COUNTERSTATEMENT OF THE CASE.

Petitioners seek the review of the *Per Curiam* affirmance, by the United States Court of Appeals for the Third Circuit, of Orders Nos. 139 and 309 of the United States District Court for the Eastern District of Pennsylvania (Honorable John P. Fullam, J.), sitting as the Penn Central Transportation Company Reorganization Court ("Reorganization Court") under Bankruptcy Act Section 77, 11 U. S. C. § 205. These Orders denied petitioners leave to intervene generally in the Reorganization Proceedings. The individual petitioners, purporting to constitute themselves as the Penn Central Bondholders Protective Committee, own $42,000 of various series of bonds of the Debtor. The Debtor as of December 31, 1970 had $1,901,761,777 outstanding long-term indebtedness.[1] The petitioners therefore own about .00022 of 1% or 1/45,280 of the outstanding long-term indebtedness of the Debtor.

A hearing was held on November 16, 1970 in the Reorganization Court with reference to 44 intervention petitions, including the instant petitioners' original application for leave to intervene generally in the Reorganization Proceedings. In answering these various intervention petitions, the Trustees of the property of the Debtor ("the Trustees") recommended that the proceedings be expedited by the Reorganization Court's designation of specified parties who could adequately represent the various groups of persons seeking general intervention. Specifically, the Trustees recommended that individual bondholders be represented by the various mortgage indenture trustees who were seeking intervention in the Reorganization Proceed-

1. This figure as to Debtor's long-term indebtedness is obtained from page 201 of the Annual Report of the Debtor (Railroad Annual Report Form A) filed with the Interstate Commerce Commission for the year ending December 31, 1970.

ings. The Trustees also recommended that creditors of the Debtor present their claims in proof of claim proceedings, thereby rendering manageable the participation of such persons in the Reorganization Proceedings.

On January 25, 1971, the Reorganization Court entered Order No. 134 in which it permitted intervention by mortgage trustees, representatives of various labor organizations, various governmental bodies, the Penn Central Company (sole shareholder of the Debtor), the Trustee of the New York, New Haven & Hartford Railroad Co., and certain other parties. Also on January 25, 1971, the Reorganization Court entered Orders Nos. 135 through 146, denying the petitions to intervene of a variety of petitioners, including the petitioners herein as well as creditors owed $700,000 and $768,000 respectively by the Debtor. Subsequently, the petitioners herein renewed their intervention petition in the Reorganization Court on June 3, 1971. In Order No. 309, the Reorganization Court again denied petitioners leave to intervene in the Reorganization Proceedings for the reason that "petitioners have insufficient interest in these proceedings to be permitted to intervene generally."

On January 26, 1971, the Court of Appeals affirmed Orders Nos. 139 and 309 of the Reorganization Court. In view of the vastness of the Penn Central Transportation Company Reorganization, the Court of Appeals noted the need to keep intervention to manageable proportions by the Reorganization Court's designation of representative interveners covering the various types of the Debtor's 150,000 creditors. The Court of Appeals observed that the Reorganization Court and the Trustees were doing everything possible to expedite the Reorganization Proceedings, while protecting the rights of all of the Debtor's creditors, including the instant petitioners. Finally, the Court

pointed out that individual creditors, such as the instant petitioners, had the opportunity to obtain a hearing before the Reorganization Court on any particular problems specifically affecting such creditors.[2]

2. The Opinion of the Court of Appeals is reproduced at pages A21-A23 of the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT.

I. This Case Was Correctly Decided by the Courts Below.

A. In Order to Expedite the Reorganization Proceedings and to Protect All Interests in the Debtor's Estate, the Reorganization Court Must Limit the Number of Intervening Parties to Manageable Proportions.

This Court has mandated the expedition of railroad reorganization proceedings to the maximum extent possible. *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648 (1935). The Reorganization Court's reasonable control on the number of general interveners directly subserves the goal of expedition. Accordingly, as recognized by petitioners, the question of whether or not individuals should be permitted to intervene in the Reorganization Proceedings must lie within the sound discretion of the Reorganization Court.[3]

These principles are especially applicable to the present reorganization, which is the largest in history. As noted by the Court of Appeals, the Debtor has $1,906,761,767 outstanding long-term debt and other liabilities and deferred credits totalling $582,276,848. These obligations are distributed among over 150,000 creditors. In this case it is not only desirable but absolutely necessary that intervention in the Reorganization Proceedings be held to manageable proportions. It is essential that the various interests be grouped and classified for purposes of representation. The Courts below recognized that the expedition of the Re-

3. It is indeed of some doubt whether petitioners' contentions are even properly before the appellate courts, since the discretionary denial of intervention in railroad reorganization and other proceedings is generally not appealable. See, e.g., *Pennington v. Missouri Pacific Railroad Co.*, 239 F. 2d 332, 335 (8 Cir. 1956); *Brotherhood of Railroad Trainmen v. Baltimore & O. R. Co.*, 331 U. S. 519, 524 (1947).

organization Proceedings requires that creditors, such as the instant petitioners, be represented by intervening mortgage indenture trustees.

This position is supported by the discretionary provisions governing intervention in railroad reorganization proceedings:

> ". . . . The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, *upon petition therefor and cause shown, any such person* or any other interested party *may be permitted to intervene.* The judge may, after hearing, make reasonable rules defining the matters upon which notice shall be given to other than interveners and the manner of giving such notice." Bankruptcy Act Section 77(c)(13), 11 U. S. C. § 205(c)(13) (emphasis supplied).

Although this statute accords to persons (such as the instant petitioners) the right to be heard at any time, the privilege of intervention is necessarily subject to the discretion of the Court. See 5 Collier on Bankruptcy ¶ 77.08, p. 491 (14th ed. 1970).

In denying petitioners' leave to intervene, the Reorganization Court adhered to the policy, repeatedly recognized by the courts, of consolidating representation of bondholders' interests in order to advance reorganization proceedings to as speedy a conclusion as possible. In *In re Denver and R. G. Western R. Co.*, 13 F. Supp. 821 (D. Col. 1936), one of the earliest cases involving intervention under the present railroad reorganization statute, the Court allowed intervention by mortgage indenture trustees but

disallowed intervention by the trustee of a family trust representing a large number of bondholders. In allowing intervention by the mortgage indenture trustees, the Court stated:

> "Mortgage trustees . . . represent thousands of security holders, whose interests they are not only empowered, but required, to protect in any legal proceedings affecting them, and in the absence of allegations of fraud, refusal of the trustee to act, or other good cause, bondholders may, in the discretion of the court, be refused permission to become parties. Convenience dictates that they be represented as a class rather than individually." 13 F. Supp. at 824.

The Court found that although the family trust represented a large amount of bonds, this fact was not compelling with regard to the question of intervention. In denying intervention to representatives of the family trust, the Court stated:

> "To allow them in at this time would require the granting of the same privilege to every individual bondholder, which, for the reasons already stated, is not necessary or desirable. As Judge Faris has said, in the Matter of Missouri Pacific R. Co. [unreported opinion]: 'Heretofore, ex gratia, I have allowed general interventions by persons and aggregations, who were at most entitled to come in specially. This action has had the effect to induce numerous others to seek the privilege of general intervention; so that, the case has become unconscionably complicated, and if this grace is broadened, it will ultimately become so unwieldy as to preclude orderly administration.'" 13 F. Supp. at 824.

Recently, the courts again have reiterated that where a class of bondholders is adequately represented in railroad reorganization proceedings, the orderly conduct of the proceedings justifies the court's denial of intervention to individual members of that class of bondholders. See *In re Central Railroad Company of New Jersey*, 429 F. 2d 507 (3 Cir. 1970), cert. denied 401 U. S. 938 (1971). In this case, the Court of Appeals upheld District Judge Augelli's discretionary denial of intervention to a bondholder's committee representing $345,000 in bonds since another committee, representing $3,500,000 in bonds, and already granted intervention, would adequately represent the interests of the class of bondholders and intervention by additional members of the class would merely complicate the reorganization. The following language of Judge Augelli's opinion is particularly relevant to the instant petitioners' effort to intervene in the Penn Central Transportation Company Reorganization Proceedings:

> "The principal objective of a Section 77 proceeding is the speedy and economical reorganization of a railroad. Every effort should be made to simplify procedures to attain that end. Intervention necessarily carries with it the addition of another and independent party to the litigation, represented by its own attorney, and in many cases, also by counsel. In exercising its discretion in matters of intervention, the Court must be mindful of the duplication of time, effort and expense that would be occasioned by the unnecessary addition of parties to the litigation. *To allow every possible interested party or group to intervene in this case would seriously curtail the orderly conduct of the proceedings and greatly increase the expenses of administration*, and this Debtor, as must be evident to all parties, can ill afford added financial burdens." *In re*

Central Railroad Company of New Jersey (D. N. J., unreported Memorandum and Order entered October 1, 1969) (emphasis supplied).

Similarly, in the instant case, the denial of general intervention to creditors such as the petitioners is consistent with the objective of expediting the reorganization proceedings. By thus holding intervention to manageable proportions, the Reorganization Court has facilitated the administration of the Debtor's estate for the benefit of all interested parties.

B. The Appropriate Method for Petitioners' Individual Participation in the Reorganization Proceedings Is Through Proof of Claim Proceedings Rather Than Through General Intervention.

In view of the vast number of bondholders and other creditors involved in large railroad reorganization proceedings, the courts have already defined the scope of individual bondholders' separate participation in such proceedings. This separate representation centers on the proof of claim procedures outlined in Bankruptcy Act Section 77(c)(7), 11 U. S. C. §205(c)(7). The predominant role of proof of claim proceedings for separate representation of bondholders' interests is emphasized in *Blumgart v. St. Louis-San Francisco Ry. Co.*, 94 F. 2d 712 (8 Cir. 1938), cert. denied 304 U. S. 567 (1938). In that case, three individuals, purporting to act as a bondholder's committee, sought intervention in railroad reorganization proceedings. The Court regarded intervention as unnecessary and inappropriate, in view of the statutory provision for proof of creditors' claims and the desirability of unitary representation of bondholders by mortgage indenture trustees in reorganization proceedings. In discussing the proof of claim subsection of the statute (Bankruptcy Act, Sec. 77

(c)(7)), the Court indicated that the statute provides adequate representation of bondholders' interests:

> ". . . this subsection provides a required way in which the bondholders must act to have their rights protected—either by the trustee filing a claim for all of the bondholders or the bondholders filing for themselves.
>
> Either of these ways affords full protection to the right of the bondholders to be represented in the proceeding. This remedy being open, there is no necessity for any of these appellant bondholders to intervene 'specially' for the purposes stated in the proposed petition in intervention." 94 F. 2d at 716-717.

As recognized by the petitioners, $36,000 of their $42,000 of bonds are already represented in the Reorganization Proceedings by mortgage indenture trustee interveners. Thus, approximately 86% of the petitioners' bonds are represented by parties in the proceedings. To permit double representation for $36,000 in bonds would be inconsistent with orderly administration of the Debtor's estate. Moreover, the petitioners have filed proofs of claim regarding their entire holdings of $42,000 in bonds. In filing proofs of claim, the petitioners have utilized the recognized method for bondholders' individual participation in railroad reorganization proceedings. As confirmed by the *Blumgart* case, *supra*, participation in the proof of claim proceedings alone affords the petitioners adequate representation in the Reorganization Proceedings.

II. Petitioners Have Cited No Authorities Which Support Their Alleged Constitutional Right to Intervene in the Reorganization Proceedings.

Petitioners in their Petition cite ten cases, none of which involve intervention in reorganization proceedings

and all of which are clearly distinguishable from the present case.

Ackerman v. United States, 178 F. 2d 983 (5 Cir. 1949), was a naturalization case in which it was held that a motion to vacate a denaturalization order was properly denied four years after the order, where there had been no appeal from the original order.

Conner v. Finch, 314 F. Supp. 364 (N. D. Ill. 1970), upheld the constitutionality of a provision of the Social Security Act relating to computation of benefits under the program for aid to families with dependent children.

In *Eisen v. Carlisle*, 391 F. 2d 555 (2 Cir. 1968), an action brought by an odd-lot trader under the Sherman Act and the Securities Exchange Act of 1934, the Court reversed an order dismissing the action as not maintainable as a class action.

Galvan v. Press, 347 U. S. 522 (1954), was a habeas corpus proceeding in which the Supreme Court held that Congress had the right to make present or former membership in the Communist Party a basis for deportation of an alien.

Ginsberg v. Lindel, 107 F. 2d 721 (8 Cir. 1939), limited the retroactivity of rent priority provisions of the Chandler Act (Bankruptcy Act Section 64(a), 11 U. S. C. § 104(a)). *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555 (1935), voided the Frazier-Lemke Act, which allowed a bankrupt farmer to retain mortgaged farm property through deferred payments or under court supervision, if creditors had not consented to the farmer's composition under Bankruptcy Act Section 75, 11 U. S. C. § 203. *Thompson v. Sivalt*, 95 F. 2d 214 (8 Cir. 1938), upheld the constitutionality of treating railroad employees' personal injury claims as an operating expense in railroad reorganization proceedings. These cases were cited by the peti-

tioners for the proposition, not at issue in this case, that the Bankruptcy Act is subject to the Fifth Amendment of the United States' Constitution.

L. B. Wilson, Inc. v. Federal Communications Commission, 170 F. 2d 793 (D. C. Cir. 1948), involved a radio broadcasting licensee's hearing before the F. C. C. prior to the Commission's granting of an application for construction of a new broadcasting station which would allegedly interfere with the original licensee's transmissions.

Washington v. United States, 401 F. 2d 915 (D. C. Cir. 1968), affirmed a conviction for violation of lottery laws despite an allegation that lottery paraphernalia, admitted in evidence, had been obtained as a result of an illegal search.

Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U. S. 100 (1969), was a patent infringement action in which the Supreme Court sustained the granting of certain injunctive relief and remanded for further proceedings regarding possible additional injunctive relief.[4]

Thus, petitioners have not cited one case which supports their contention that the provisions of Bankruptcy Act Section 77(c)(13) do not conform with due process and equal protection requirements. No case exists, because the courts have uniformly recognized that a Reorganization Court must have the discretion to determine how various interests should be represented in such a way as to make the proceedings manageable. In view of adequate representation of the petitioners by the mortgage trustees and by the petitioners' filing of proofs of claim, no constitutional issue is presented by Orders Nos. 139 and 309 of the Reorganization Court. The reasonableness of such means of representation in the Reorganization Proceedings nullifies peti-

4. The petitioners have cited, as an additional case, "*Harrell v. Tobriner*, 394 U. S. 618." The petitioners have apparently mis-cited this case.

tioners' constitutional attack on Bankruptcy Act Section 77(c)(13). Cf. *Thompson v. Siratt*, 95 F. 2d 214, 217 (8 Cir. 1938), a case relied upon by petitioners.

Although petitioners are able to cite no case which supports their conclusory constitutional assertions, some discussion of procedure might clarify the issue. Bankruptcy Act Section 77(c)(13) specifically provides that any creditor is entitled to be heard at any time.[5] Since all matters come before the Reorganization Court on petitions and motions, the petitioners, through their local counsel, may inquire of the court personnel as to petitions filed and the times set for hearings. It would be impossible to send copies of all petitions and all notices of hearings to each of the thousands of creditors of the Debtor. To do so would only bog down the Reorganization Proceedings and greatly add to the expense of administration of the Debtor's estate. See *In re Denver & R.G. Western R. Co.*, 13 F. Supp. 821 (D. Col. 1936); *In re Long Island R. Co.*, 83 F. Supp. 974 (E. D. N. Y. 1949).

If a matter comes before the Reorganization Court in which the petitioners (or any other creditors) feel that they have a particular interest, such creditors may ask to intervene specially. Bankruptcy Act Section 77(c)(13); 5 Collier on Bankruptcy ¶ 77.08, pp. 493-494 (14th ed. 1970). The Court then considers whether or not the creditor is entitled to intervene specially. As an example of this, if a petition were to be filed with the Court relating specifically to property mortgaged as security for one or another of the bond issues partially owned by the petitioners, the petitioners might move to intervene specially as to that particular peti-

5. Apparently, this right has been overlooked by the petitioners in filing the instant Petition for Writ of Certiorari. See, e.g., petitioners' statement of the Question Presented in their Petition, i.e., ". . . whether it is constitutional to deprive a creditor of his right to be heard in a corporation [sic] reorganization . . . ." (Petition, p. 2).

tion. Such a method certainly does not violate constitutional due process or equal protection requirements. On the contrary, it assures that every creditor has the right to be heard in Court and to be a party to the proceedings where it is feasible or where the creditor claims a special interest in specific assets being considered by the Court.

CONCLUSION.

For the foregoing reasons, this cause should not be reviewed by the Court, and the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

BLANK, ROME, KLAUS & COMISKY,
EDWARD W. STERN,
Special Counsel for Respondents.

Dated: April 1972